IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.4724 OF 1996

Deepak Patil, of Bombay, Indian)
Inhabitant, residing at Worli Bhatt)
Chawl, 25, Tenements, Room No.30)
Baineshwar Sadan, Sashmira Road)
Bombay 400 025.).. Petitioner

Versus

1) D.H.Deshmukh, Presiding Officer)
Sixth Labour Court, Bombay)
functioning from Arun Chambers)
6th Floor, Tardeo Road)
Bombay 400 025.)

2) KMC Garments Pvt. Ltd.)
a Private Limited Company)
incorporated under the provisions)
of the Companies Act having their)
factory at 412-A, Bldg. No.A-2)
Shah & Nahar Industrial Estate)
LDhan Mill Compound, Lower Parel)
Bombay 400 013.).. Respondents

Mr.K.S.Bapat for the Petitioner.

Respondent No.1 formal party.

Mr.Aditya Chitale for Respondent No.2.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 25TH AUGUST 2004

ORAL JUDGMENT :

. By this Petition, the Petitioner impugns the order dated 31st January 1996 passed by the Sixth Labour Court, Bombay in Application (IDA) No.483 of 1994. The Petitioner had filed an application under Section 33C(2)

of the Industrial Disputes Act, 1947, (hereinafter referred to as the "ID Act") claiming minimum wages in accordance with the Government Notification No.MWA 4282/4722/Lab.& dated 12th November 1982 which fixed the minimum wages payable in the Readymade Garments industry which is a scheduled industry under the Minimum Wages Act. The Petitioner was employed as an Assistant Store Keeper by the second Respondent Company. It appears that he was not paid minimum wages from October 1989 till July 1993 when he ceased to be in employment of the Company. The workman under the Notification was entitled to minimum wages at the rate of Rs.420/- per month and a special allowance of Rs.1305.20 at the time when his services were terminated in July 1993. Instead of paying these wages, he was paid Rs.725/- as consolidated wages per month. Despite several representations made to the employer, he failed to comply with the Notification of 1982. Therefore, the workman filed an application under Section 33C(2) of the ID Act.

2. The Company contested the application by contending that the category of Assistant Store Keeper was not mentioned in the Notification on which basis the claim had been made. It was also contended that the minimum wage Notification was not applicable to the workman at all and he was not entitled to the dues

claimed by him.

3. Evidence of the workman was recorded before the Labour Court. The employer did not bother to rebut this evidence. The Labour Court by its impugned order has held that since the Notification did not mention the category of Assistant Store Keeper, the workman was not entitled to the wages applicable to this grade. The Labour Court has observed that the very fact that the workman was designated as Assistant Store Keeper would mean that somebody else was employed as Store Keeper. On this basis, the Labour Court was of the view that the category of Assistant Store Keeper did not get the minimum wages payable under the Notification.

4. The learned Advocate for the Petitioner submits that the Labour Court has misread the Notification and placed reliance only on a part of it. According to the learned Advocate, the Notification makes it clear that all employees by whatever name called who do the work of the nature done by persons falling in the categories named in the Notification were entitled to be paid minimum wages in accordance with the Notification. He contends that the Labour Court has lost sight of this very vital feature of the Notification and has rejected the claim on the ground that the Assistant Store Keeper was not mentioned as a category in the Notification.

5. Mr.Chitale for the Second Respondent states that he has no instructions and, therefore, has written to the Company and he would be withdrawing his appearance. However, he does not have any proof that the Second Respondent Company has been served with his notice.

6. The evidence on record does not in any manner indicate that there was a Store Keeper appointed by the Company nor does it show that the Assistant Store Keeper was not doing the same nature of work as expected from a Store Keeper. The finding of the Labour Court that the very fact that workman was appointed as an Assistant Store Keeper would mean that there was somebody working as a Store Keeper is not borne out by either the pleadings or the evidence on record. If indeed there was a Store Keeper employed by the Respondent, they would have mentioned so in the Written Statement. Furthermore, no suggestion is made to the Petitioner in the cross-examination that he was employed as an Assistant to somebody else who was appointed as a Store Keeper. Therefore, this finding of the Labour Court is baseless.

7. As rightly contended by the learned Advocate for the Petitioner, the Notification makes it clear that an employee doing the same nature of work as those whose

categories are mentioned in the minimum wage Notification are also entitled to the minimum wages. There is no dispute that the Assistant Store Keeper was doing the work of the same nature as a Store Keeper. In these circumstances, it is difficult to comprehend as to how the Labour Court has rejected the claim made by the workman.

8. The order of the Labour Court dated 31st January 1996 is set aside. The claim made by the Petitioner under Section 33C(2) of the ID Act is allowed. The amount shall be paid to the Petitioner within eight weeks from today.

9. Rule made absolute with costs.

10. Office to issue authenticated copy of this judgment.